

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 09-12204-RWZ

YODERNY PENA

v.

THOMAS DICKHAUT

Certificate of Appealability
February 20, 2013

ZOBEL, D.J.

Petitioner, Yoderny Pena, who was convicted in the state court of first degree murder, sought a writ of habeas corpus in this court on the grounds that his trial counsel was ineffective and that the prosecutor in his closing argument violated petitioner's Fifth Amendment rights against self incrimination. As to both issues I determined that the Supreme Judicial Court's decision was not unreasonable and that petitioner, in any event, did not suffer harm. However, reasonable judges could disagree as to both issues. Indeed, the Supreme Judicial Court acknowledged that the Fifth Amendment question was "a close one," and I acknowledged that I might reach a different result were I deciding it in the first instance.

Accordingly, the certificate of appealability shall issue as to both issues presented to this court.

February 20, 2013

DATE

/s/Rya W. Zobel

RYA W. ZOBEL

UNITED STATES DISTRICT JUDGE